IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOLANTA ROZWADOWSKA, individually and on behalf of all others similarly situated,

Third-Party Plaintiff,

v. CASE NO. 1:16-cv-7184

SETERUS, INC. f/k/a IBM LENDER BUSINESS PROCESS SERVICES, INC., and QBE FIRST INSURANCE AGENCY, INC., n/k/a NGLS INSURANCE SERVICES, INC.,

Third-Party Defendants.

DEFENDANT'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, and the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), Defendant Seterus, Inc. ("Seterus"), through counsel, hereby removes this action from Cook County Circuit Court, Chancery Division, to the United States District Court for the Northern District of Illinois. The grounds for removal are as follows:

I. REMOVAL IS TIMELY

1. On or about May 24, 2016, Plaintiff Jolanta Rozwadowska ("Plaintiff") filed a Class Action Third-Party Complaint (the "Complaint" or "Compl.").[1] On June 27, 2016, Seterus

[1] Seterus states that although Plaintiff styles her action as a Class Action *Third-Party* Complaint, it is actually a separate, independent proceeding from the state-court foreclosure action that was filed against Plaintiff, and was designated with a separate case

was served with a copy of the Complaint (with exhibits) and Summons.[2] Therefore, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

II. THIS COURT HAS FEDERAL-QUESTION AND SUPPLEMENTAL JURISDICTION OVER THIS ACTION

2. Under 28 U.S.C. § 1441(a), this action is removable because this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, which states that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

3. Specifically, Plaintiff's Complaint alleges claims on behalf of "herself and a Class of similarly situated individuals who had insurance policies force-placed on their mortgage agreements," Compl., at ¶ 1, and seeks to represent "a nationwide class" and "a Subclass of similarly [situated] individuals in Illinois." *Id.* at ¶¶ 43-44. The Complaint alleges causes of action against Seterus and/or co-Defendant QBE FIRST Insurance Agency, Inc. n/k/a NGLS Insurance Services, Inc. ("QBE") for breach of contract (Count I); breach of contract via breach of the implied covenant of good faith and fair dealing (Count II); unjust enrichment (Count III); violation of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.* (Count IV); violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* (Count V); and

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number. The Complaint does not seek indemnity or contribution from the defendants and it does not relate to the same transaction — the borrower's default — pleaded in the foreclosure complaint. Rather, the allegations in the Complaint relate to events that occurred *after* the foreclosure proceeding was filed. Thus, the removed proceeding is actually not a "third-party" action within the traditional legal meaning of that term, nor is it a third-party complaint allowed by Illinois law. *See* 735 ILCS 5/2-406 ("a defendant may by third-party complaint bring in as a defendant a person not a party to the action who is or may be liable to him or her for all or part of the plaintiff's claim against him or her"); *Imp. Sales, Inc. v. Cont'l Bearings Corp.*, 217 Ill. App. 3d 893, 906 (1st Dist. 1991) ("Where the scope of the third party complaint goes beyond the framework of the original complaint it becomes more than a claim for indemnity or contribution.").

[2] True and correct copies of these documents are attached hereto as composite Exhibit "A."

violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (Count VI). Of these six counts, Counts IV and V are claims "arising under" the laws of the United States. *See, e.g., Pantoja v. Portfolio Recovery Assocs., LLC*, 2015 WL 1396609, at *4 (N.D. Ill. March 24, 2015) ("The court's original jurisdiction in this case was based on the FDCPA, a federal statute."); *Swanson v. Bank of Am., N.A.*, 566 F. Supp. 2d 821, 827 (N.D. Ill. 2008) (recognizing original jurisdiction over TILA claim).

4. This Court has supplemental jurisdiction over the remaining causes of action under 28 U.S.C. § 1367(a), as Plaintiff's state-law causes of action arise from the same common nucleus of operative facts as Plaintiff's federal-law causes of action. Each of Plaintiff's causes of action – state- or federal-law based – arise from Plaintiff's core allegations that "Defendants force-placed insurance policies on [Plaintiff's] and Class members' mortgage agreements in excess of what was reasonable and appropriate to protect Defendants' interest in [Plaintiffs'] and Class members' properties." Compl., at ¶ 2. *See, e.g., City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 165 (1997) ("Here, once the case was removed, the District Court had original jurisdiction over ICS' claims arising under federal law, and thus could exercise supplemental jurisdiction over the accompanying state law claims so long as those claims constitute 'other claims that . . . form part of the same case or controversy.'" (quoting 28 U.S.C. § 1367(a)).

III. THIS COURT *ALSO* HAS ORIGINAL AND REMOVAL JURISDICTION OVER THIS ACTION PURSUANT TO CAFA

5. As an independent, *additional* reason why removal of this action is permissible, CAFA also grants original and removal jurisdiction over Plaintiff's claims. CAFA provides that a class action may be removed in accordance with 28 U.S.C. § 1446 if: (a) membership in the purported class is not less than 100; (b) any member of the plaintiff class is a citizen of a foreign

country or a state different from any defendant; and (c) the aggregate amount in controversy exceeds $5,000,000. *See* 28 U.S.C. §§ 1453(b) and 1332(d).

6. The Purported Class Is More than 100. CAFA's first removal requirement (that there be not less than 100 purported class members) is satisfied. *See* 28 U.S.C. § 1332(d)(5). As Plaintiff alleges in her Complaint, "[u]pon information and belief, the Class and Illinois Subclass each comprise thousands of borrowers." Compl., at ¶ 45. Plaintiff further alleges that she "believes there are thousands of Class and Illinois Subclass members based upon the fact that Defendants sell and service thousands of mortgage loans and insurance policies in Illinois and throughout the United States," thereby making it "likely that there are thousands of Class and Illinois Subclass members." *Id.*

7. There Is Diversity of Citizenship. CAFA's second removal requirement (that any member of the plaintiff class be a citizen of a state different from any defendant) is likewise satisfied. *See* 28 U.S.C. § 1332(d)(2)(A). As Plaintiff alleges in her Complaint, Seterus is a Delaware corporation with its principal place of business in Research Triangle Park, North Carolina. *See* Compl., at ¶ 5. Plaintiff, on the other hand, is a citizen of Illinois. *See id.* at ¶ 4. Thus, the requisite diversity exists.

8. The Amount in Controversy Threshold Is Satisfied. CAFA's third removal, requirement (that the aggregate amount in controversy exceed $5,000,000) is also met. *See* 28 U.S.C. § 1332(d)(2). For purposes of determining the amount in controversy in class actions, CAFA expressly dictates that "the claims of the individual members shall be aggregated." *Id.* at § 1332(d)(6).

9. In assessing the amount in controversy for CAFA removal purposes, "[t]he question is not what damages the plaintiff will recover, but what amount is 'in controversy'

between the parties." *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005). "Once the proponent of jurisdiction has set out the amount in controversy, only a 'legal certainty' that the judgment will be less forecloses federal jurisdiction." *Id.* at 449.

10. Here, Plaintiff has not expressly alleged any specific amount of damages. Nonetheless, Plaintiff repeatedly alleges that she "believes there are *thousands* of Class and Illinois Subclass members based upon the fact that Defendants sell and service *thousands* of mortgage loans and insurance policies in Illinois and throughout the United States," thereby making it "likely that there are *thousands* of Class and Illinois Subclass members." Compl., at ¶ 45 (emphases added). Moreover, Plaintiff seeks to recover, on behalf of herself and the "thousands" of Class and Illinois Subclass members, "damages equal to the amount of actual damages that they sustained." *Id.* at Counts I-VI, "WHEREFORE" clauses. In addition, with respect to two of her counts, Plaintiff also seeks an award of "punitive damages," *id.* at Counts III and VI, "WHEREFORE" clauses, which is legally relevant to CAFA amount-in-controversy analysis. *See Back Doctors, Ltd. v. Metro. Prop. Cas. & Ins. Co.*, 637 F.3d 827, 830-31 (7th Cir. 2011).

11. Further, a review of Seterus's and QBE's business records confirms that for the five-year time period of approximately May 1, 2011, through April 1, 2016, nationwide borrowers with loans serviced by Seterus were charged approximately $305 million in net written premiums for what the Complaint in this action labels as "force-placed insurance." *See* Declaration of John Meadows in Support of Defendant Seterus, Inc.'s Notice of Removal, attached as Exhibit "B."

12. Moreover, as the Seventh Circuit has held in reversing a remand order under a CAFA analysis, it is significant that Plaintiff's Complaint "d[oes] not set a cap on recovery – as

it might have done if the plaintiff had represented that the class would neither seek nor accept more than $5 million in the aggregate." *Brill*, 427 F.3d at 449.

13. For these reasons, the $5 million amount-in-controversy threshold under CAFA is satisfied.

IV. PROCEDURAL REQUIREMENTS UNDER THE REMOVAL STATUTE ARE SATISFIED

14. Finally, the procedural requirements set forth in 28 U.S.C. § 1446 are satisfied here. Section 1446(a) requires the removing party to file a notice of removal "in the district court of the United States for the district and division within which such action is pending," which Seterus has done with this filing. That Section also requires the removing party to provide the district court with a copy of all process, pleadings, and orders served on defendants in the state action. All such documents are attached as composite Exhibit "A."

15. Pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal are being served upon counsel for Plaintiff and filed with the Clerk of the Circuit Court for Cook County, Illinois.

16. Finally, attached as Exhibit "C" is the consent to this removal by Defendant QBE FIRST Insurance Agency, Inc. n/k/a NGLS Insurance Services, Inc.

WHEREFORE, Seterus respectfully removes the case pending in Cook County Circuit Court, Chancery Division, to this Court.

DATED: July 12, 2016

HOGAN LOVELLS US LLP

By: */s/ J. Robert Robertson* .
J. Robert Robertson

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on July 12, 2016, a true and correct copy of Defendant Seterus, Inc.'s Notice of Removal was electronically filed with the Clerk of the Court using CM/ECF and served via electronic mail or U.S. Mail upon the following counsel of record as indicated below:

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